

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 10, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann  
Walter Schmidt

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Michael and Elisabeth Rehtin, BA05:055, owners  
Mason Sherwood, BA05:055, petitioner  
Pat and Daniel Mervin, BA05:056, petitioners  
Richard Mix, BA05:057, petitioner  
Paul Dabey, BA05:058, petitioner  
Les Stelling, BA05:058, neighbor  
Edwin Fiedler, BA05:058, neighbor  
Robert Binter, BA05:058, neighbor  
Peter Janicki, BA05:058, neighbor  
David and Karen Dulin, BA05:047, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I move to approve the Summary of the Meeting of July 27, 2005.*

The motion was seconded by Mr. Tarmann. A discussion ensued and Mr. Tarmann pointed out an error on Page 10 regarding an addition to the reasons for approval of the request of the North Lake Yacht Club (BA05:016). Mr. Bartholomew then amended his motion.

Mr. Bartholomew                      *I move to approve the Summary of the Meeting of July 27, 2005, with the following changes on Page 10:*

*The addition to the reasons for approval of the request of the North Lake Yacht Club, which reads, "Furthermore, the approval of this request will be benefit the public by providing a sailing school for the*

*education of the children and families as well as the opportunity for people who do not live on the lake to be able to use the lake.”, shall be changed to read, “Furthermore, the approval of this request will benefit the public by providing a sailing school for the education of the children and families who do not live on the lake.”*

The amended motion was seconded by Mr. Tarmann and carried unanimously.

**NEW BUSINESS:**

**BA05:055 MICHAEL & ELISABETH RECHTIN - Owners (Mason Sherwood - Petitioner)**

Mr. Ward

*I make a motion to adopt the staff’s recommendation, as stated in Staff Report, with the following modifications:*

*Condition No. 2 shall be changed to read “The footprint of the residence may be expanded as shown on the plans submitted with the application, but with the elimination of the proposed 2.5 ft. x 9.1 ft. dinette extension on the lake side of the residence. This will allow an addition with a footprint of approximately 375 sq. ft., which will result in a total footprint for the residence and attached garage of approximately 1,916 sq. ft. The resulting open space will be approximately 7,113 sq. ft.”*

*Condition No. 8 shall be added to read: “If the proposed attic storage area above the garage is accessible from the second floor of the residence or by permanent stairs from the garage, it must be included in the floor area calculations. The proposed attic storage area above the garage does not need to be included in the floor area calculations if it is only accessible via pull-down stairs from the garage.”*

*Condition No. 9 shall be added to read: “Expansion of the second floor of the residence into the area of the cathedral ceiling above the great room will not be permitted without additional approval from the Waukesha County Board of Adjustment if that expansion will result in a total floor area of more than the maximum permitted floor area of 2,992 sq. ft.”*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff’s recommendation was for approval, with the following modifications and conditions:

1. The 10.2 ft. x 12.2 ft. shed must be removed from the property no later than one (1) year after the issuance of a Zoning Permit to remodel and expand the residence.

2. The footprint of the residence may be expanded, but only to square off the northwest corner of the residence. According to the Plat of Survey submitted with the application, this will allow an addition of approximately 9.3 ft. x 30.3 ft. and will result in a total footprint for the residence and attached garage of approximately 1,822 sq. ft. The resulting open space will be approximately 7,387 sq. ft.
3. A second floor may be added to the residence, but the total floor area, including both floors of the residence and the attached garage, may not exceed 2,992 sq. ft. This will result in a floor area ratio of approximately 32.5 %.
4. The deck shall not be expanded to extend in front of the new addition, except in conformance with the shore and floodplain setback requirements.
5. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
7. No changes to the existing grade will be permitted.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to open space because the lot area of 9,209 sq. ft. is less than the required minimum open space of 10,500 sq. ft. Due to the proximity of the residence to the road, converting the living area that was previously converted from an attached garage back to a garage is the only way to provide a garage on the property. The Planning and Zoning Division staff believes a garage is necessary for reasonable use of the property. Conformance with the floor area ratio requirement would permit a total floor area of only 1,795 sq. ft., which would allow an expansion of only 130 sq. ft. This would be unnecessarily burdensome because it would not allow the residence to be expanded to compensate for the floor area that would be lost when the attached garage is restored and it would not allow the residence to be expanded in keeping with other homes in the neighborhood.

The approval of this request, with the recommended modifications and conditions, will result in only a slight decrease in open space (approximately 157 sq. ft.), but it will allow the residence to be remodeled and expanded in a way that will not adversely affect the lake, the adjacent properties, or the general public. In addition, a non-conforming structure will be eliminated. Therefore, the approval of this request, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

**BA05:056 MR. & MRS. DANIEL J. MERVIN**

Mr. Bartholomew

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in Staff Report, with the elimination of recommended Condition No. 2.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for approval, with the following modifications and conditions:

1. Prior to the issuance of a Zoning Permit for the proposed additions, the non-conforming gazebo, which was built by the previous owner without proper permits, must be removed or applications for an after-the-fact Zoning Permit and the necessary variances and special exceptions to authorize that gazebo must be submitted to the Planning and Zoning Division staff. Since the gazebo was built by the previous owner, the petitioners will be charged only the regular fees, not double fees as would otherwise be required for after-the fact applications, should they wish to apply for an after-the-fact Zoning Permit and the necessary variances and special exceptions to attempt to authorize the gazebo.
2. The one-story addition on the south side of the residence shall not extend more than 8 ft. from the south wall of the residence, as measured to the outer edge of the wall, with an overhang not to exceed two (2) ft. in width.
3. If desired, the one-story addition on the south side of the residence may be extended closer to the road than proposed, but it must be located at least 10 ft. from the detached garage.
4. If the one-story addition on the south side of the residence is located less than 10 ft. from the existing shed, a firewall sufficient to meet the one-hour fire rating contained in the building code must be installed in the shed and/or the addition.
5. Prior to the issuance of a Zoning Permit for the additions, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, a detailed cost estimate for the proposed additions must be submitted to the Planning and Zoning Division staff. If that detailed cost estimate indicates the cost of the proposed additions will exceed 50% of the fair market value of the residence, the plans must either be scaled back so that the cost does not exceed 50% of the fair market value of the residence, or a variance to remodel a non-conforming structure in excess of 50% of its fair market value must be secured.
7. No changes to the existing grade will be permitted.
8. The temporary storage shed adjacent to the east wall of the garage must be removed from the property upon completion of the proposed additions.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Planning and Zoning Division staff believes it would be unnecessarily burdensome not to permit this residence, which is smaller than the minimum required house size and in need of modernization, to be expanded and remodeled.

The approval of this request, with the recommended modifications and conditions, will bring the first floor area and the total floor area of the residence into conformance with the required minimums and allow the residence to be updated with a new bathroom and mechanicals. The proposed two-story addition on the west side of the residence will extend only 8 ft. to the west of the existing residence and it will be less than an inch closer to the north lot line than the existing residence and farther from the floodplain than the existing residence. Both proposed additions conform with the shore setback requirement and with the floor area ratio requirement and will reduce the open space by only 236 sq. ft. Finally, the approval of this request, with the recommended modifications and conditions, will result in a residence more in keeping with other residences in the area, while not adversely affecting the river or the neighboring properties. Therefore, the approval of this request, with the recommended modifications and conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

#### **BA05:057 RICHARD MIX**

Mr. Tarmann

*I move to approve the request in accordance with the staff's recommendation, as stated in Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The dormer addition shall extend no closer to the side lot line than the existing residence and shall be no larger than proposed (8 ft. 4 inches by 7 ft. 6 inches).
2. A future bathroom may be added in the dormer addition without the need for an additional variance to remodel a non-conforming structure in excess of its fair market value, as long as the dormer is not expanded.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height,

bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. However, special exceptions do not require a demonstration of unnecessary hardship. The proposed dormer addition requires only a special exception, rather than a variance, from the offset requirement because it will extend no closer to the north lot line than the residence. If the residence had been constructed parallel to the lot line, rather than at a slight angle, the overhanging second floor addition would also require only a special exception, rather than a variance, from the offset requirement. The proposed increase to the floor area is extremely minor and will not adversely affect the lake, the adjacent properties, or the general public. The Planning and Zoning Division staff feels it would be unnecessarily burdensome to deny the requested variances. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

**BA05:058 AMY & PAUL DABEY**

Mr. Bartholomew

*I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial of the request for a variance from the lot width requirements for duplexes, but approval of the request for a variance from the road setback requirement for a duplex, with the following conditions:

1. The lot cannot be divided until and unless the property is rezoned to the R-3 Residential District.  
Note: This will also require an amendment to the Waukesha County Development Plan.
2. If the property is rezoned to the R-3 Residential District, the lot may be divided by Certified Survey Map, but the lot containing the duplex must have a minimum average width of 180 ft. and the vacant lot must have a minimum average width of 120 ft.
3. The proposed vacant lot shall be used only for a single-family residence, not for an additional duplex.
4. Each unit of the duplex must meet the minimum floor area requirements, as set forth in the Conditional Use section of the Waukesha County Zoning Code, which are 900 sq. ft. for a one-bedroom unit, 1,000 sq. ft. for a two-bedroom unit, and 1,100 sq. ft. for a three-bedroom unit. Prior to the lot being divided, a floor plan, drawn to scale, of the duplex must be submitted to the Planning and Zoning Division staff for review and approval. If either unit does not meet the above-stated minimum floor areas, the building must be modified so that each unit meets the above-stated minimum floor areas or a variance from minimum floor area requirements must be obtained, prior to the lot being divided.
5. Prior to the lot being divided, the commercial panel truck and the semi-trailer must be removed from the property or a Conditional Use for commercial truck parking must be obtained.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested lot width variance for the proposed duplex lot would not be a hardship since the parcel is 300 ft. wide and it could be divided into a 180 ft. wide lot containing the duplex and a 120 ft. wide vacant lot, in conformance with the Ordinance requirements.

However, it would be a hardship not to grant the requested road setback variance. Granting the requested road setback variance so that the duplex would become a permitted use if the property is rezoned to the R-3 Residential District, with the recommended conditions, will allow the petitioners to divide the lot and retain the duplex if they are successful in rezoning the property. The road setback of the building, which will not be changed, does not pose a safety hazard. The duplex has apparently existed on the property for many years and its continued existence will not adversely affect the neighboring properties and is not contrary to the public interest. Therefore, the approval of the requested road setback variance, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA05:047 DAVID & KAREN DULIN**

Mr. Schmidt

*I move that we amend Condition No. 1 of our decision of July 13, 2005, to grant variances from the floor area ratio and open space requirements, as recommended by the staff in the Memo dated August 10, 2005.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff recommendation was to amend Condition No. 1. The existing Condition No. 1 reads as follows:

“The two existing detached garages must be removed within 6 months of issuance of a Zoning Permit for the new residence and attached garage. A performance bond shall be filed with the Waukesha County Department of Parks & Land Use to ensure that the garages will be removed in a timely manner. If the garages are not removed in a timely manner, the performance bond will allow the County to remove the garages at the property owner’s expense.”

The proposed amended Condition No. 1 would read as follows:

“The two existing detached garages must be removed prior to the expiration of the Zoning Permit for the new residence and attached garage. A performance bond shall be filed with the Waukesha County Department of Parks & Land Use and the Town of Summit to ensure that the garages will

be removed in a timely manner. If the garages are not removed in a timely manner, the performance bond will allow the County or the Town to remove the garages at the property owner's expense. Once the garages are removed, the property owner shall notify Waukesha County Planning staff so that a site inspection can be conducted to verify compliance with this condition."

**ADJOURNMENT:**

Mr. Schmidt *I move to adjourn this meeting at 9:05 p.m.*

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment